

CREDIT AND DEBT MANAGEMENT OPERATING STANDARDS AND PROCEDURES HANDBOOK

CHAPTER 10. WRITE-OFFS AND CLOSE-OUTS

Section 1.0 General

This chapter establishes procedures to ensure assets are secured when 1) complete or partial payments on uncollectible debts are obtained; 2) all reasonable collection efforts are exhausted prior to write-off; or 3) thorough administrative close-out of the grant, loan, loan guarantee, or financial contract file is conducted. The write-off and close-out process encompasses:

- Liquidation of the assets related to the debt;
- Litigation of delinquent debts;
- Write-off of uncollectible amounts owed; and
- Administrative closure of files.

An organizational unit may follow procedures, which differ from those in this chapter, only if approval of alternative procedures has been granted, in writing, by the Director for the Office of Financial Management (OFM). Any request for authority to deviate from these procedures must be accompanied by the proposed alternative in detail. Approved changes will be established as a supplement to this directive by the requesting organizational unit.

Section 2.0 Cost-Effectiveness of Collection Procedures

.01 Costs versus Amounts Collected

The criteria to determine the cost-effectiveness of the collectibility of a debt will, in part, govern the course of action to be taken. Organizational units will provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various stages of delinquency will be used to compare the cost-effectiveness of alternative collection procedures. Responsible collection officials, in consultation with the accounting or finance officer, will establish guidelines that:

- a. Identify when further collection efforts are unlikely to result in cost-effective recoveries;
- b. Assist in evaluating offers to compromise, including determination of administrative costs in continuing to pursue collection of a disputed debt; and

- c. Establish minimum amounts below which certain specified collection efforts need not be taken.

.02 Alternative Collection Actions

Estimated cost and recovery data must be used in determining the most cost-effective collection process. Generally, these estimates should be used to determine the appropriate course of action from the following alternatives:

- a. Negotiate a compromise with the borrower or debtor;
- b. Refer the debt to Treasury for cross-servicing;
- c. Litigate the debt owed; or
- d. Write-off and suspend action by placing a debt older than two years in an account entitled *Currently Not Collectible*. (See [Revised Circular No. A-129 - Managing Federal Credit Programs, Section V.](#))

Section 3.0 Administration of Delinquent Debts

- .01 (See Chapter 9 of the [DOC Credit and Debt Handbook](#), Section 2 for definition of “delinquency”)

To protect the Federal government's interests, organizational units must ensure that all steps have been taken to collect a debt before it reaches the delinquency stage. Organizational units should use all appropriate debt collection tools, both before and after delinquency occurs, until such time as it is determined that the debt is uncollectible.

Section 4.0 Workout Groups - General

- 01 Organizational units involved in direct loan, guaranteed loan, grant, and cooperative agreement programs must refer debts that are 90 days delinquent to an organizational unit workout group for intensive collection action. Follow-up procedures by the workout group will be the same for other receivables, i.e., general or trade accounts receivable. See [Chapter 9](#) of this Handbook, Claims Collection Litigation Reports, for Workout Group functions.

Section 5.0 Legal Counsel Advice and Levels of Authority for Compromise and Suspension or Termination of Collection of Debt

The workout group(s) will consult with the bureau's legal counsel to determine whether the documentary evidence collected is sufficient to warrant compromise, termination, or suspension of the debt under the terms of the [Federal Claims Collection Standards, Chapter IX](#). Legal counsel will evaluate the evidence and advise the workout group(s).

The workout group(s) will consult the bureau's legal counsel to advise on all requests to compromise, terminate, or suspend collection action on a debt. All recommendations for compromise, suspension, or termination of a claim shall specifically identify the reasons for such actions. Valid reasons for compromise, suspension, or termination of a claim are set forth in the [Federal Claims Collection Standards, Chapter IX](#), and recapitulated in Sections 6.0 and 7.0 of this Chapter. Upon approval by the head of the organizational unit, the workout group(s) will forward all proposed compromises, suspensions, or termination actions of the debt to the Department's General Counsel for disposition.

The organizational unit's Secretarial Officer, or in the case of the Minority Business Development Agency, the Director, shall have the authority to review and approve any claim up to \$100,000, exclusive of any interest, penalties, and administrative charges. This authority may be re-delegated to other designees. The bureau's legal counsel's written concurrence must accompany any recommendation to the Secretarial Officer. Organizational units must obtain the concurrence of the Department's Assistant General Counsel for Finance and Litigation on any proposed compromise, suspension, or termination of a claim over \$25,000.

Except as otherwise provided by law, any action to compromise, suspend, or terminate collection of a debt in the amount of \$100,000 or greater must be submitted for approval to the U. S. Department of Justice (DOJ). Prior to such submission to DOJ, the proposed action first shall have received the concurrences of the Department's Assistant General Counsel for Finance and Litigation, the Director for Financial Management, and the Department's Chief Financial Officer or designee. The organizational unit shall provide a completed Claims Collection Litigation Report, (see [Chapter 9](#) of this Handbook, Claims Collection Litigation Reports) a complete and concise statement of the reasons for requesting authority to take such action, all necessary documentation, and the bureau's legal counsel's written concurrence in such action. The request for authority to take such action shall be submitted to DOJ on behalf of the organizational unit by the Assistant General Counsel for Finance and Litigation.

The delegations of authority are to be complied with unless otherwise authorized by law. In all cases, bureau's legal counsel should assure that the proposed actions are consistent with the [Federal Claims Collection Standards, Chapter IX](#). The Office of the Assistant General Counsel for Finance and Litigation should be consulted on questions regarding the compromise, suspension, or termination of collection of a debt.

As a practical matter, an organizational unit does not need to refer a debt for concurrence for termination of collection action if the bureau referred the debt to DOJ for litigation and DOJ determines that litigation is not appropriate and returns the account to the Department. Nor does the organizational

unit need to refer accounts on which it wants to terminate collection action because the debt is legally without merit or cannot be substantiated.

In some instances, certain organizational units may have independent statutory authority to compromise claims of any amount.

A Claims Collection Litigation Report (CCLR) (see Section 11.06 of this Chapter) shall be used when referring claims to the DOJ. (A copy of the CCLR and instructions can be found in Chapter 8.)

Section 6.0 Compromise of Claims

A claim may be compromised if the organizational unit cannot collect the full amount because:

- of the debtor's inability to pay the full amount in a reasonable time, as verified through credit reports or other financial information;
- of the Federal government's inability to enforce collection in full within a reasonable time, at reasonable cost, by enforced collection proceedings;
- of the cost of collecting the debt does not justify the enforced collection of the full amount; or
- there is significant doubt concerning the Federal government's ability to prove its case in court.

.01 Inability to Pay

In determining the debtor's inability to pay, the following factors, among others, may be considered: age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; and the availability of assets or income which may be realized upon enforced collection proceedings.

The workout group(s) will give consideration to the exemption(s) available to the debtor under State or Federal law in determining the Federal government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Federal government's ability to enforce collection. A compromise effected under this section should be for an

amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures giving due regard for any exemptions that may be available to the debtor and the time and cost of collection. Compromises payable in installments are discouraged. However, if payment of a compromise by installments is necessary, an agreement for the re-installment of the prior indebtedness less sums already paid and acceleration of the balance due upon delinquency in the payment of any installment should be obtained.

If the organizational unit's files do not contain reasonably up-to-date credit and financial information for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expenses. Additional data may be obtained from the audited financial statements of corporate debtors. Additional information may also be obtained from a credit reporting bureau, in the form of a commercial or consumer credit report or the bureau's investigative report showing the debtor's assets, liabilities, income and expenses.

.02 Installment Payments

If the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size of such installment payments should have a reasonable relation to the size of the debt and the debtor's ability to pay. Installment payments should be sufficient in size and frequency to liquidate the Federal government's claim in not more than three years. For loans, repayment in installments should normally be no longer than the time period remaining for payment of the debt plus three years, or in accordance with appropriate statutes. Installment payments of less than \$50 per month should be accepted in only the most unusual circumstances. An organizational unit holding an unsecured claim for administrative collection should attempt to obtain with assistance from legal counsel an executed confess-judgment note, from a debtor when the total amount of the deferred installments will exceed \$750. Such notes may also be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An organizational unit may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the organizational unit's option.

.03 Litigative Probabilities

A claim may be compromised if there is doubt concerning the Federal government's ability to prove its case in court, either because of the legal issues involved or as a result of a bona fide dispute as to the facts surrounding the claim. In such cases, the amount accepted in compromise, should fairly reflect the probability of prevailing on the legal question(s) involved, as well as the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Federal government's claim. In determining the litigation risks and costs involved, proportionate weight should be given to the probable amount of court costs that may be assessed against the Federal government if it is unsuccessful in litigation.

.04 Cost of Collecting Claim

A claim may be compromised if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigation costs of collection, giving due consideration for the time which it would take to effect collection. Collection costs may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

.05 Enforcement Policy

Certain organizational units employ economic penalties as enforcement mechanisms to achieve program objectives. These mechanisms may be in the form of statutory fines, penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance. Such debts may be compromised if the organizational unit's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by accepting the agreed upon sum. Mere accidental or technical violations by an individual or commercial entity may be dealt with less severely than willful and/or substantial violations.

.06 Joint and Several Liability

When two or more debtors are jointly and severally liable, collection action should proceed against all debtors. The organizational unit should not attempt to allocate the burden of paying such a claim among the debtors but should proceed to liquidate the indebtedness as quickly as possible and in a cost-effective manner. Care should be taken so that a compromise with one debtor does not release the organizational unit's claim against the remaining debtor(s). The amount of a compromise with one debtor will not be considered a precedent, or as morally binding, in determining the amount which will be required from other debtors jointly and severally liable on the claim.

.07 Compromise for Combination of Reasons

A claim may be compromised for one or more reasons authorized in this section.

.08 Department of Justice (DOJ), Civil Division Review

If an organizational unit holds a debtor's firm written offer of compromise for a substantial amount and the organizational unit is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the Civil Division or other appropriate litigating division of the DOJ for review and guidance. The referral shall be cleared with the General Counsel of the Department or his/her designee. The DOJ may act upon the offer or return it to the organizational unit with instructions or advice. (See [31 C.F.R. § 902.5](#).)

Section 7.0 Suspension or Termination of Collection Action

Prior to suspending or terminating collection action, an organizational unit is required to take all reasonable collection actions and fully document the appropriate information concerning the debtor and the claim. Suspensions and terminations of collection activity must be approved as cited in this section of the chapter.

.01 Suspension of Collection Activity

- a. Inability to locate debtor. Collection action may be suspended temporarily on a claim when:
 1. The debtor cannot be located after diligent effort;
 2. There is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. Due consideration must be given to the size and amount of the debt the collection of which may be realized because of the continued collection action; and
 3. The debtor has requested a waiver or review of the debt.
- b. Financial condition of the debtor. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Federal government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:
 1. The Federal government is not prevented from taking action by the applicable statute of limitations; or

2. Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation. (See [31 U.S.C. § 3716\(e\)\(1\)](#)); or
 3. The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended and this time period is likely to enhance the debtor's ability to pay the principal amount of the debt with any accrued interest at a later date.
- c. During the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits collection of the debt during that time.
 - d. Interest, penalties, and administrative costs will continue to accrue during the period of suspension. Bureaus may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the Federal government's best interest.

.02 Termination of Collection Activity

A workout group(s) may recommend that collection activity be terminated and consider the organizational unit's file on the claim closed when:

- a. It becomes clear that the Federal government cannot collect or enforce the collection of any significant sum from the debtor, after consideration of the following:
 1. Judicial remedies;
 2. The debtor's future financial prospects; and
 3. Exemptions available to the debtor under State and federal law;
- b. The debtor cannot be located, and either:
 1. There is no security remaining to liquidate; or
 2. The applicable statute of limitations has run out and the prospects of collecting by administrative offset (see [31 C. F. R. § 901.3](#)) are too remote to justify retention of the claim;
 - i. Cost of further collection action will likely exceed amounts that may

be recovered;

- ii. It is determined that the claim is plainly erroneous or legally without merit; or
- iii. It is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment would be unavailing.

.03 Termination of Collection Activity on Audit-Related Debts

Each determination within an organizational unit to terminate collection action on audit-related debts, unless made with the DOJ concurrence, shall be fully justified and documented by the appropriate organizational unit official and must be approved by the appropriate legal officer with responsibility for the type of debt in the affected organizational unit. A complete copy of each such determination (with copies of notices to the debtor, supporting justifications, explanations, clearances, and approvals) shall be forwarded to the Office of Inspector General and to the audit action official within ten working days of any such decision.

Section 8.0 Partially or Completely Uncollectible Debts

Debts that cannot be collected in full by an organizational unit's collection efforts should be compromised, suspended, or terminated in accordance with Sections 6.0 and 7.0 of this Chapter, or if such actions cannot be taken, reported to DOJ in accordance with Section 9.0 below for further collection/legal action. As a general rule, since workout group(s) are required to take all reasonable collection actions short of legal action (including attempts to locate the debtor and determination of ability to pay), the determination as to whether or not a debt should be forwarded to the DOJ for further collection action should be governed by the potential for collection through the eventual use of legal action.

Section 9.0 Referral of Delinquent Debts to DOJ

This section describes the procedures for referrals of delinquent debts to DOJ. Such referrals by organizational units will be in accordance with the following:

- 31 U.S.C., § 3711, Collections and Compromise of Claims;
- Federal Claims Collection Standards, Title 31, Code of Federal Regulations, Part 904, (Referrals to Department of Justice);
- OMB [Revised Circular A-129](#), "Managing Federal Credit Programs;" and
- Treasury's guidance on "[Managing Federal Receivables](#)."

.01 Prompt Referral to DOJ

Delinquent debts shall be promptly referred to the DOJ for litigation when:

- a. Aggressive collection action has been taken; and
- b. Consideration has been given to whether or not the claim should be compromised, or collection action should be suspended or terminated, and there is sufficient reason to conclude that full or partial recovery of the debt would be best achieved through litigation.

.02 Referral Procedure to DOJ

Claims for which the gross original amount is over \$1,000,000 must be referred to the Commercial Litigation Branch, [Civil Division, Department of Justice](#) (DOJ), Washington, D.C. 20530. Claims for which the gross original amount is \$1,000,000 or less shall be referred to DOJ's Nationwide Central Intake Facility, as required by the [CCLR](#) instructions. All referrals to DOJ must be made through the Department's Office of General Counsel. Organizational units, through the Office of General Counsel, should clear referrals to the U.S. Attorney Offices with the Commercial Litigation Branch.

.03 Minimum Amount of Referrals

Debts with a principal amount of less than \$2,500 will not be forwarded to DOJ for litigation unless: (a) litigation to collect such smaller claims is important to ensure compliance with the agency's policies or programs; (b) the claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as lien against the debtor's property pursuant to 28 U.S.C. § 3201 and returned to the forwarding agency for enforcement; or (c) the debtor has the clear ability to pay the claim and the government effectively can enforce payment with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government. Seek legal advice before forwarding such a claim, as DOJ will need to be contacted ahead of time.

.04 Preservation of Evidence

Care will be taken by organizational unit collection officials to preserve all original files, records, and exhibits relating to claims referred to the DOJ. Certified copies of documents will be forwarded to DOJ with the litigation referral. Unless specifically requested by the DOJ, original documents should never be forwarded to the U.S. Attorney's Office handling the litigation.

.05 [Claims Collection Litigation Report \(CCLR\)](#)

This report shall be used for all referrals to the Department of Justice. A CCLR should be prepared for and accompany any referral to DOJ, whether for administrative action (e.g. compromise or termination of collection of claims) or for litigation. (See [Chapter 9](#) of this Handbook, Claims Collection Litigation Reports.)

The following information will be included in the report:

a. Documentation of Prior Collection Actions

A brief summary or checklist of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral. If any of the administrative collection actions required in the [Federal Claims Collection Standards, Chapter IX](#) have been omitted, the reason for omission must be provided. Claims may be returned to the organizational unit if insufficient justification for the omission is not provided.

b. Identifying Information on the Debtor

Such information will include the TIN or EIN and the organizational unit's file/claim number.

c. Current Address of Debtor

The current address of the debtor or the name and address of the agent for a corporation upon who service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the DOJ for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of the debtor and a statement of the steps taken to locate the debtor.

d. Credit Data

Claims referred to the DOJ for litigation will be accompanied by reasonably current credit data indicating that there is a reasonable prospect of collecting from the debtor by judicial proceedings, having due regard for the exemptions available to the debtor under State and federal law and the judicial remedies available to the Federal government. Such credit data may take the form of one or more of the following:

1. A commercial or consumer credit report;

2. An investigative report of an organizational unit, or [private collection agency](#) approved by Treasury, showing the debtor's assets, liabilities, income and expenses;
3. The individual debtor's own financial statement executed under penalty of perjury reflecting his/her assets, liabilities, income, and expenses; and
4. An audited balance sheet of a corporate debtor.

e. Omission of Credit Data

Such credit data may be omitted if:

1. A surety bond is available in an amount sufficient to satisfy the claim in full;
2. The forced sale value of the security available for application to the Federal government's claim is sufficient to satisfy the claim in full;
3. The organizational unit wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;
4. The debtor is in bankruptcy or receivership;
5. The debtor's liability to the Federal government is fully covered by insurance, in which case the organizational unit will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or
6. The legal nature of the debtor is such that credit data is normally not available or cannot reasonably be obtained (e.g., a unit of State or local government).

Section 10.0 Write-Off Procedures

- .01 The workout group(s) will set forth in a memorandum the action taken to recover the debt, the collectibility of the debt and the reason(s) the debt should be written-off and submit the memorandum to the appropriate Department official for approval.
- .02 After proper clearances and authorization, organizational units shall write-off

uncollectible debts from receivable accounts. Accounts shall be written-off when one or more of the following criteria apply:

- The organizational unit is unable to locate the debtor and finds that either there is no security to be liquidated to recover the amount owed, or the federal statute of limitations has expired for litigation and administrative offset and the statutes of the State in which the debtor resides preclude further collection;
- The debt cannot be substantiated because an organizational unit does not have, or cannot produce, evidence or witnesses to validate the claim (such a debt cannot be referred to the Internal Revenue Service (IRS) as taxable income and the credit bureau shall be notified to reflect the change in status if previously reported as a delinquent debt);
- The debt is considered to be legally without merit upon the organizational unit's determination that the debt was never owed and was erroneously classified as a debt. (The credit bureau shall be notified to reflect the change in the status if previously reported as a delinquent debt.);
- The costs of further collection action will probably exceed the amount which could be recovered; or
- The organizational unit is unable to collect any substantial amount of the debt because: 1) a judgment has been obtained and the application of all collection techniques failed to produce full collection, 2) a collection agency has been unable to collect the debt and has returned it with sufficient documentation to demonstrate the debt is uncollectible, or 3) the borrower has been declared bankrupt and no further prospects for worthwhile recovery are available.

.03 The workout group will forward a memorandum to the accounting or finance office, which shall make appropriate adjustments in the organizational unit's accounting records, including the allowance for uncollectible loans account.

.04 The accounting or finance officer will record the write-off and report the amount written-off on the appropriate reports as required.

.05 [Currently Not Collectible](#)

As a result of the DCIA and the OMB [Revised Circular A-129](#), Treasury has revised its write-off policy to provide for the establishment of a standard to write off delinquent debt older than two years. While a significant portion of delinquent debt would be written off, cost effective collection efforts will continue. Specifically, if an agency determines that continued collection efforts after mandatory write-off is likely to yield higher returns (than the existing write-off and close-out process) then this written-off

debt is not closed-out but treated as *currently not collectible* (CNC). (See [OMB Revised Circular A-129, Section V.](#)) While CNC debts are not accounts receivables on financial statements, the CNC process permits and encourages the use of tools of DCIA allowing delinquent debt to be pursued until the end of its statutory collection life-cycle.

Section 11.0 Administrative Close-Outs

.01 Physical Close-Out

When the loan is completely paid in full or written-off, the project file is prepared for record storage. There are two sources of files, one maintained by the program officials servicing and monitoring the loan and one by the accounting or finance officer.

- a. Each office should establish a checklist of required documents to be maintained.
- b. Each office will establish its own time frame for record retention and disposal procedures in accordance with [DAO 205-1](#), "Records and Other Documents Disposition Management Program" and its legislative authority.

.02 Administrative Actions

- a. Despite write-off, it may be appropriate for organizational units to maintain inactive debt files of individual accounts that may be collected subsequently by administrative offset against future benefit claims or used for future credit pre-screening purposes.

Organizational units may re-institute collection action on written-off accounts if there is subsequent evidence that a debtor has new ability to repay.

- b. The IRS will recognize amounts that have been written-off and closed-out as taxable income to debtors classified as individuals, partnerships, sole proprietorships, and corporations. Organizational units must report any debt with a principal amount exceeding \$600. Organizational units may report debts for amounts less than \$600. Amounts to be written-off and reported to the IRS shall be recorded with debtor identifying information in an IRS referral log maintained by each organizational unit.

By February 28th of the year following the organizational unit's determination that no further collection action will be taken on a debt, the organizational unit must report to the IRS on IRS Form 1099-C all amounts written-off. By January

31 of the same year, the organizational unit must have provided the debtor with a copy of IRS Form 1099-C, or a written statement of the impending IRS 1099-C report. The organizational unit is not obligated to wait until the statute of limitations expires before reporting a debt. In addition to reporting the principal amount owed, the organizational unit must also report all administrative costs and interest.

The amount discharged in a compromise is reportable if the debt is compromised because: 1) the debtor is unable to pay the debt within a reasonable period of time or refuses to pay the debt in full and the Federal government is unable to enforce collection in full within a reasonable time; or 2) the cost of collecting the claim does not justify the enforced collection of the full amount.

The amount discharged in a compromise should not be reported if the debt is compromised because there is doubt as to the Federal government's ability to prove its case in court for the full amount claimed.

Organizational units must report all written-off amounts over \$600 discharged in bankruptcy proceedings on a 1099-G. The IRS will make the determination of whether the amount written off is considered income.

See the [IRS website](#) for information returns and backup withholding.